



February 23, 2007

SENATE BILL No. 445

DIGEST OF SB 445 (Updated February 21, 2007 12:50 pm - DI 106)

Citations Affected: IC 33-42; noncode.

Synopsis: Notaries. Requires a non-attorney who advertises as a notary public or notario publico to include a disclosure stating that the person is not an attorney. Makes it notorio publico deception, a Class A misdemeanor, to: (1) advertise as a notary without the required disclosure; (2) advertise as an expert in immigration matters without being a federally designated entity; or (3) accept payment for legal advice. Provides for the revocation of a notary public's commission if the notary public is convicted of notario publico deception.

Effective: July 1, 2007.

Broden, Zakas

January 11, 2007, read first time and referred to Committee on Judiciary.
February 22, 2007, amended, reported favorably — Do Pass.

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February 23, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 445

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-42-2-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) A notary public
3 may not do any of the following:

4 (1) Use any other name or initial in signing acknowledgments,
5 other than that by which the notary has been commissioned.

6 (2) Acknowledge any instrument in which the notary's name
7 appears as a party to the transaction.

8 (3) Take the acknowledgment of or administer an oath to any
9 person whom the notary actually knows:

10 (A) has been adjudged mentally incompetent by a court; and

11 (B) to be under a guardianship under IC 29-3 at the time the
12 notary takes the acknowledgment or administers the oath.

13 (4) Take the acknowledgment of any person who is blind, without
14 first reading the instrument to the blind person.

15 (5) Take the acknowledgment of any person who does not speak
16 or understand the English language, unless the nature and effect
17 of the instrument to be notarized is translated into a language

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which the person does speak or understand.

(6) Acknowledge the execution of:

(A) an affidavit, unless the affiant acknowledges the truth of the statements in the affidavit; or

(B) an instrument, unless the person who executed the instrument:

(i) signs the instrument before the notary; or

(ii) affirms to the notary that the signature on the instrument is the person's own.

(b) **Except as provided in subsection (d)**, if a notary public violates this article, the notary's appointment may be revoked by the judge of the circuit court in which the notary resides.

(c) The secretary of state may:

(1) investigate any possible violation of this section **or of section 10 of this chapter (notario publico deception)** by a notary public; and

(2) under IC 4-21.5, revoke the commission of a notary public who violates this section **or section 10 of this chapter (notario publico deception)**.

If the secretary of state revokes the commission of a notary public, the notary public may not reapply for a new commission for five (5) years after the revocation. **If a notary public has been convicted of notario publico deception (this chapter), the notary public may not reapply for a new commission.**

(d) If a notary public is convicted of notario publico deception (this chapter), the judge of the circuit court in which the notary resides shall permanently revoke the notary's appointment.

SECTION 2. IC 33-42-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) **This section applies only to a person who**

(1) is not an attorney in good standing admitted to practice law in Indiana. **and**

(2) **knowingly or intentionally:**

(A) advertises the person's services in a language other than English;

(B) represents in the advertisement:

that the person is a notary, notary public, notario, notario publico, or another designation that indicates in a language other than English that the person is a notary public; and

(C) fails to conspicuously state in the advertisement, both in English and in the language of the advertisement, that the person is not an attorney in good standing admitted to practice law in

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1 ~~Indiana;~~
2 ~~commits a Class A misdemeanor.~~

3 (b) As used in this section, "advertise" means to make a
4 communication to the public offering the person's services. The
5 term includes a communication made in any medium, including a
6 written medium, a broadcast medium, by means of the Internet, on
7 a web site, or using any other form of electronic communication.

8 (c) As used in this section, "notary designation" means a
9 representation that a person is a notary public, including the use
10 of the term:

11 (1) notary public;

12 (2) notario;

13 (3) notario publico;

14 or any other term indicating in English or a language other than
15 English that a person is a notary public.

16 (d) As used in this section, "notary disclosure" means a
17 statement in English, and, if an advertisement requiring a notary
18 disclosure is made in another language, the other language, stating:

19 **"I AM NOT AN ATTORNEY PRACTICED TO LICENSE**
20 **LAW IN INDIANA, AND I MAY NOT GIVE LEGAL**
21 **ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."**

22 If the notary disclosure is required to be made in a written
23 advertisement, the notary disclosure must appear in a conspicuous
24 size. If the notary disclosure is required to be made in an oral
25 advertisement, the notary disclosure must be spoken at a normal
26 speed and at a normal volume.

27 (e) A person who knowingly or intentionally:

28 (1) advertises using the notary designation without using the
29 notary disclosure:

30 (A) in the advertisement;

31 (B) on the person's business card; and

32 (C) on the person's letterhead;

33 (2) advertises or claims to be an expert on immigration
34 matters without being a designated entity as defined under 8
35 CFR 245a.1(l);

36 (3) accepts payment in exchange for providing legal advice or
37 any other assistance that requires legal analysis, legal
38 judgment, or interpretation of the law;

39 commits notario publico deception, a Class A misdemeanor.

40 SECTION 3. [EFFECTIVE JULY 1, 2007] IC 35-42-2-10, as
41 amended by this act, applies only to crimes committed after June
42 30, 2007.

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SENATE MOTION

Madam President: I move that Senator Zakas be added as second author of Senate Bill 445.

BRODEN

 COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 445, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 33-42-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) A notary public may not do any of the following:

- (1) Use any other name or initial in signing acknowledgments, other than that by which the notary has been commissioned.
- (2) Acknowledge any instrument in which the notary's name appears as a party to the transaction.
- (3) Take the acknowledgment of or administer an oath to any person whom the notary actually knows:
 - (A) has been adjudged mentally incompetent by a court; and
 - (B) to be under a guardianship under IC 29-3 at the time the notary takes the acknowledgment or administers the oath.
- (4) Take the acknowledgment of any person who is blind, without first reading the instrument to the blind person.
- (5) Take the acknowledgment of any person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does speak or understand.
- (6) Acknowledge the execution of:
 - (A) an affidavit, unless the affiant acknowledges the truth of the statements in the affidavit; or
 - (B) an instrument, unless the person who executed the instrument:
 - (i) signs the instrument before the notary; or
 - (ii) affirms to the notary that the signature on the instrument is the person's own.

(b) **Except as provided in subsection (d),** if a notary public violates

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this article, the notary's appointment may be revoked by the judge of the circuit court in which the notary resides.

(c) The secretary of state may:

- (1) investigate any possible violation of this section **or of section 10 of this chapter (notario publico deception)** by a notary public; and
- (2) under IC 4-21.5, revoke the commission of a notary public who violates this section **or section 10 of this chapter (notario publico deception).**

If the secretary of state revokes the commission of a notary public, the notary public may not reapply for a new commission for five (5) years after the revocation. **If a notary public has been convicted of notario publico deception (this chapter), the notary public may not reapply for a new commission.**

(d) If a notary public is convicted of notario publico deception (this chapter), the judge of the circuit court in which the notary resides shall permanently revoke the notary's appointment.

Page 1, line 2, delete "A" and insert "This section applies only to a".

Page 1, line 2, delete ":".

Page 1, line 3, strike "(1)".

Page 1, line 4, delete ";" and insert ".".

Page 1, line 4, strike "and".

Page 1, strike lines 5 through 7.

Page 1, line 8, strike "(B)".

Page 1, line 8, delete "uses".

Page 1, line 8, strike "in the advertisement:".

Page 1, line 9, delete "(i) terms that represent".

Page 1, line 9, strike "that the person is a notary, notary".

Page 1, strike lines 10 through 11.

Page 1, line 12, strike "a notary public;".

Page 1, delete lines 13 through 17.

Page 2, strike lines 1 through 5, begin a new paragraph and insert:

"(b) As used in this section, "advertise" means to make a communication to the public offering the person's services. The term includes a communication made in any medium, including a written medium, a broadcast medium, by means of the Internet, on a web site, or using any other form of electronic communication.

(c) As used in this section, "notary designation" means a representation that a person is a notary public, including the use of the term:

- (1) notary public;**



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(2) notario;
 (3) notario publico;
 or any other term indicating in English or a language other than English that a person is a notary public.

(d) As used in this section, "notary disclosure" means a statement in English, and, if an advertisement requiring a notary disclosure is made in another language, the other language, stating:

"I AM NOT AN ATTORNEY PRACTICED TO LICENSE LAW IN INDIANA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

If the notary disclosure is required to be made in a written advertisement, the notary disclosure must appear in a conspicuous size. If the notary disclosure is required to be made in an oral advertisement, the notary disclosure must be spoken at a normal speed and at a normal volume.

(e) A person who knowingly or intentionally:

(1) advertises using the notary designation without using the notary disclosure:

(A) in the advertisement;

(B) on the person's business card; and

(C) on the person's letterhead;

(2) advertises or claims to be an expert on immigration matters without being a designated entity as defined under 8 CFR 245a.1(l);

(3) accepts payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law;

commits notario publico deception, a Class A misdemeanor."

Page 2, delete lines 6 through 33, begin a new paragraph and insert:

"SECTION 3. [EFFECTIVE JULY 1, 2007] IC 35-42-2-10, as amended by this act, applies only to crimes committed after June 30, 2007."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 445 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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